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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,423	08/25/2003	Edward Kirko	KIE-0002	3997
7590 08/01/2005				
CANTOR COLBURN LLP 55 Griffin Road South Bloomfield, CT 06002			EXAMINER MEISLIN, DEBRA S	
			ART UNIT 3723	PAPER NUMBER
DATE MAILED: 08/01/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/648,423

Applicant(s)

KIRKO, EDWARD

Examiner

Debra S. Meislin

Art Unit

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/25/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

1. Claims 17-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 14, 2005.
2. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Throughout the claims, "distil" should be ---distal---.

In claims 4 and 5, "the distil end of the flip-top can opener" lacks antecedent basis and should be changed to ---the distal end of the length of rigid material---.

Claim 7 is vague and indefinite since the scope of "a modified end" cannot be ascertained. It is not clear as to how the end is being modified.

Claim 8 is vague and indefinite since the scope of "standard" cannot be ascertained. The term "standard" in claim 8 is a relative term which renders the claim indefinite. The term "standard" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

In claim 12, the scope of "a church key style can and bottle opener" cannot be determined since a church key is broadly defined as "a can or bottle opener" and which may or may not have a triangular head.

In claims 15 and 16 the terms "is reduced between 5 and 30 degrees" and "is reduced by about 15 degrees" are not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree (the angle which is being

reduced has not been defined), and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The body of apparatus claims 15 and 16 appear to be directed to method steps for making the device and not to an apparatus claim limitations. Consequently, claims 15 and 16 should be rewritten in independent method claim form or the method steps should be cancelled from the claims. Note that rewritten method claims may be restrictable in a future office action.

Claims 13-16 appear to be product by process claims. In accordance with MPEP 2113:

2113 [R-1] Product-by-Process Claims

PRODUCT-BY-PROCESS CLAIMS ARE NOT LIMITED TO THE
MANIPULATIONS OF THE RECITED STEPS, ONLY THE STRUCTURE
IMPLIED BY THE STEPS

"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted) (Claim was directed to a novolac color developer.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5-8 and 12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Horne Jr.

Horne Jr. discloses a wedge shaped head as broadly claimed by applicant.

5. Claims 1 and 5-7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Miller.

Miller discloses a wedge shaped head as broadly claimed by applicant.

6. Claims 1-4, 6-8 and 12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kaskouras.

Kaskouras discloses a wedge shaped head as broadly claimed by applicant.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horne Jr., Miller or Kaskouras in view of Allen Sr.

Horne Jr., Miller or Kaskouras disclose all of the claimed subject matter except for the opener being made of metal, plastic or a composite. Allen Sr. discloses an opener which may be made out of metal, plastic or a composite. It would have been obvious to one having ordinary skill in the art to form the opener of Horne Jr., Miller or Kaskouras in view of Allen Sr. out of metal, plastic or a composite as such are obvious equivalents as taught by Allen Sr.

9. Claims 13-16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Horne Jr. or Kaskouras.

Claims 13-16 appear to be product by process claims. In accordance with MPEP 2113:

2113 [R-1] Product-by-Process Claims

PRODUCT-BY-PROCESS CLAIMS ARE NOT LIMITED TO THE
MANIPULATIONS OF THE RECITED STEPS, ONLY THE STRUCTURE
IMPLIED BY THE STEPS

"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted) (Claim was directed to a novolac color developer.

It would have been obvious to one having ordinary skill in the art to form the device of Horne Jr. or Kaskouras by welding, gluing, and/or straightening as such are old and well known methods of forming hand tools.

10. Claims 15-16 are rejected under 35 U.S.C. 103(a) as obvious over Horne Jr. or Kaskouras in view of Rydquist.

Rydquist discloses an uncapping tool which appears to have a can opening end which extends at a reduced angle. It would have been obvious to one having ordinary skill in the art to form the device of Horne Jr. or Kaskouras with a can opening end which extends at a reduced angle as such would have been an obvious matter of choice and to firmly grasp a workpiece as taught by Rydquist.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Debra S. Meislin whose telephone number is 571 272-4487. The examiner can normally be reached on M-F, alt. Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571 272 4485. The fax phone number for the organization where this application or proceeding is assigned is 571 273-8300

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Debra S Meislin
Primary Examiner
Art Unit 3723

July 28, 2005